

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TONY PRESTEL,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendants.

Case No. 3:12-CV-00137-MMD-VPC

ORDER ACCEPTING REPORT AND
RECOMMENDATION

Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 21), regarding Plaintiff Tony Prestel's Motion to Remand (dkt. no. 13) and Defendant Michael Astrue's Cross-Motion For Summary Judgment (dkt. no. 15). Judge Cooke entered the R&R on July 3, 2013. Based on a stipulation for extension of time filed by the parties (dkt. no. 22), the Court allowed Plaintiff to file any objections by August 19, 2013 (dkt. no. 23). No objections were filed.


This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no

1 objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
2 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that
3 district courts are not required to review "any issue that is not the subject of an
4 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in
9 order to determine whether to adopt the R&R. The R&R finds that the ALJ's decision to
10 uphold the denial of Plaintiff's disability claims was supported by substantial evidence on
11 the record. The R&R thus recommends that the Court deny Plaintiff's motion to remand
12 for a new hearing (dkt. no. 13) and grant Defendant's Cross-Motion for Summary
13 Judgment (dkt. no. 15). In reaching its conclusion, the R&R makes the following findings:
14 (1) the ALJ's failure to specify where Plaintiff's degenerative disease was located did not
15 have any bearing on the ALJ's determination that Plaintiff was not disabled; (2) the ALJ
16 properly resolved conflicts between the testimony of physician witnesses and gave
17 "specific and legitimate reasons" for weighing the testimony the way he did; (3) the ALJ
18 did not commit reversible error in formulating Plaintiff's RFC analysis; and (4) the ALJ did
19 not need to call a vocational expert to testify because such analysis was not necessary.
20 Upon review of the R&R and the record in this case, the Court determines that it is
21 appropriate to adopt the R&R in full.

22 It is hereby ordered that the R&R (dkt. no. 21) is accepted and adopted. Plaintiff's
23 Motion to Remand (dkt. no. 13) is denied and Defendant's Cross-Motion For Summary
24 Judgment (dkt. no. 15) is granted.

25 DATED THIS 23rd day of October 2013.

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28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE